

Legal Services Act: New forms of practice and regulation

Overview and summary of consultations

Annex A

Extracts from Solicitors Act 1974 and Administration of Justice Act 1985 showing amendments prospectively made by the Legal Services Act 2007

Solicitors Act 1974 (as amended)

1B. Restriction on practice as sole solicitor

- (1) Rules under section 31 (rules as to professional practice etc) must provide that a solicitor may not practise as a sole solicitor unless he has in force -
 - (a) a practising certificate, and
 - (b) an endorsement of that certificate by the Society authorising him to practise as a sole solicitor (a "sole solicitor" endorsement).
- (2) The rules may provide that, for the purposes of the rules and this Act, a solicitor is not to be regarded as practising as a sole solicitor in such circumstances as may be prescribed by the rules.
- (3) The rules must prescribe the circumstances in which a solicitor may be regarded by the Society as suitable to be authorised to practise as a sole solicitor.

Administration of Justice Act 1985

9. Incorporated practices

- (1) The Society may make rules -
- (a) making provision as to the management and control of legal services bodies;
 - (b) prescribing the circumstances in which such bodies may be recognised by the Society as being suitable bodies to undertake the provision of any solicitor services or other relevant legal services;
 - (c) prescribing the requirements which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies so recognised if they are to remain so recognised; and
 - (d) regulating the conduct of the affairs of such bodies.
- (1A) Where the Society makes rules under subsection (1), it must by rules under subsection (1)(c) prescribe the requirement that (subject to any exceptions provided by the rules) recognised bodies must not provide services other than –
- (a) solicitor services, or
 - (b) solicitor services and other relevant legal services.
- (1B) “Relevant legal services” means –
- (a) solicitor services, and
 - (b) where authorised persons other than solicitors or registered European lawyers are managers or employees of, or have an interest in, a recognised body, services of the kind provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities within the meaning of the Legal Services Act 2007).
- (1C) The Society may by rules under this section provide that services specified, or of a description specified, in the rules are not to be treated as solicitor services or other relevant legal services.

- (2) Rules made by the Society may also make provision -
- (a) for the manner and form in which applications for recognition under this section, or for the renewal of such recognition, are to be made, and requiring such applications to be accompanied by a fee of such amount as the Society may from time to time determine;
 - (aa) for the manner and form in which other applications under the rules are to be made, and requiring such applications to be accompanied by a fee of such amount as the Society may from time to time determine;
 - (b) for regulating the names that may be used by recognised bodies;
 - (c) about the time when any recognition, or renewal of recognition, takes effect and the period for which it is (subject to the provisions made by or under this Part) to remain in force;
 - (d) for the suspension or revocation of any such recognition, on such grounds and in such circumstances as may be prescribed by the rules;
 - (e) about the effect on the recognition of a partnership or other unincorporated body (“the existing body”) of any change in the membership of the existing body, including provision for the existing body’s recognition to be transferred where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business;
 - (ea) for the keeping by the Society of a register containing the names and places of business of all bodies which are for the time being recognised under this section, and such other information relating to those bodies as may be specified in the rules;
 - (eb) for information (or information of a specified description) on such a register to be made available to the public, including provision about the manner in which, and times at which, information is to be made so available;
 - (f) for rules made under any provision of the 1974 Act to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Society to be necessary or expedient;
 - (fa) about the education and training requirements to be met by managers and employees of recognised bodies;
 - (fb) for rules made under any provision of the 1974 Act to have effect in relation to managers and employees of recognised bodies with such additions, omissions or other modifications as appear to the Society to be necessary or expedient;
 - (fc) requiring recognised bodies to appoint a person or persons to monitor compliance, by the recognised body, its managers and its employees, with requirements imposed on them by or by virtue of this Act or any rules applicable to them by virtue of this section;

- (g) [repealed]
 - (h) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies under or by virtue of this Part.
- (2A) If rules under this section provide for the recognition of legal services bodies which have one or more managers who are not legally qualified, the rules must make provision –
- (a) for the recognition of such bodies to be suspended or revoked, on such grounds and in such circumstances as may be prescribed by the rules;
 - (b) as to the criteria and procedure for the Society’s approving, as suitable to be a manager of a recognised body, an individual who is not legally qualified (and for the Society’s withdrawing such approval).
- (2B) Rules under this section may make provision for appeals to the High Court against decisions made by the Society under the rules –
- (a) to suspend or revoke the recognition of any body;
 - (b) not to approve, as suitable to be the manager of a recognised body, an individual who is not legally qualified (or to withdraw such approval).
- (2C) The rules may provide for appeals against decisions within subsection (2B)(b) to be brought by the individual to whom the decision relates (as well as the body).
- (2D) In relation to an appeal under rules made by virtue of subsection (2B), the High Court may make such order as it thinks fit as to payment of costs.
- (2E) The decision of the High Court on such an appeal shall be final.
- (2F) Where the Society decides to recognise a body under this section it must grant that recognition subject to one or more conditions if –
- (a) the case is of a kind prescribed for the purposes of this section by rules made by the Society, and

(b) the Society considers that it is in the public interest to do so.

(2G) While a body is recognised under this section, the Society –

(a) must direct that the body's recognition is to have effect subject to one or more conditions if -

(i) the case is of a prescribed kind, and

(ii) the Society considers that it is in the public interest to do so;

(b) may, in such circumstances as may be prescribed, direct that the body's recognition is to have effect subject to such conditions as the Society may think fit.

“Prescribed” means prescribed by rules made by the Society.

(2H) The conditions which may be imposed under subsection (2F) or (2G) include –

(a) conditions requiring the body to take specified steps that will, in the opinion of the Society, be conducive to the carrying on by the body of an efficient business;

(b) conditions which prohibit the body from taking any specified steps except with the approval of the Society.

(c) if rules under this section provide for the recognition of legal services bodies which have one or more managers who are not legally qualified, a condition that all the managers of the body must be legally qualified.

“Specified” means specified in the condition.

(2I) Rules made by the Society may make provision about when conditions imposed under this section take effect (including provision conferring power on the Society to direct that a condition is not to have effect until the conclusion of any appeal in relation to it).

(2J) Section 86A of the 1974 Act applies to rules under this section as it applies to rules under that Act.

- (2K) Rules under this section may contain such incidental, supplemental, transitional or transitory provisions or savings as the Society considers necessary or expedient.
- (3) Despite section 24(2) of the 1974 Act, section 20 of that Act (prohibition on unqualified person acting as a solicitor) does not apply to a recognised body; and nothing in section 24(1) of that Act applies in relation to such a body.
- (4) [repealed]
- (5) A certificate signed by an officer of the Society and stating that any body is or is not, or was or was not at any time, a recognised body shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (6) Schedule 2 (which makes provision with respect to the application of provisions of the 1974 Act to recognised bodies and with respect to other matters relating to such bodies) shall have effect.
- (7) Subject to the provisions of that Schedule, the Lord Chancellor may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament provide for any enactment or instrument passed or made before or in the same session as the Legal Services Act 2007 was passed and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Lord Chancellor to be necessary or expedient.
- (8) In this section –
- “the 1974 Act” means the Solicitors Act 1974;
- “authorised person” means an authorised person in relation to an activity which is a reserved legal activity (within the meaning of the Legal Services Act 2007);
- “the Society” has the meaning given by section 87(1) of the 1974 Act;
- “legally qualified” and “legal services body” have the meaning given by section 9A;

“manager”, in relation to a body, has the same meaning as in the Legal Services Act 2007 (see section 207 of that Act);

[repealed]

[repealed]

“recognised body” means a body for the time being recognised under this section;

“registered European lawyer” means a person who is registered with the Law Society under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000.

“solicitor services” means professional services such as are provided by individuals practising as solicitors or lawyers of other jurisdictions.

and a person has an interest in a body if the person has an interest in the body within the meaning of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act).

(9) [repealed]

9A. Legal services bodies

(1) For the purposes of section 9 a “legal services body” means a body (corporate or unincorporated) in respect of which -

- (a) the management and control condition, and
- (b) the relevant lawyer condition,

are satisfied.

(2) The management and control condition is satisfied if -

- (a) at least 75% of the body’s managers are legally qualified,
- (b) the proportion of shares in the body held by persons who are legally qualified is at least 75%,
- (c) the proportion of voting rights in the body which persons who are legally qualified are entitled to exercise, or control the exercise of, is at least 75%,

- (d) all the persons with an interest in the body who are not legally qualified are managers of the body, and
 - (e) all the managers of the body who are not legally qualified are individuals approved by the Society as suitable to be managers of a recognised body.
- (3) The Society may by rules under section 9 provide that, in relation to specified kinds of bodies, subsection (2) applies as if the references to 75% were to such greater percentage as may be specified (and different percentages may be specified for different kinds of bodies).
- (4) The relevant lawyer condition is satisfied in relation to a body if at least one manager of the body is –
- (a) a solicitor,
 - (b) a registered European lawyer, or
 - (c) a qualifying body.
- (5) For that purpose a qualifying body is a body in respect of which –
- (a) the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of subsection (6)(a) to (c),
 - (b) the relevant lawyer condition is satisfied by virtue of subsection (4)(a) or (b), and
 - (c) the services condition is satisfied.
- (6) For the purposes of this section the following are legally qualified –
- (a) an authorised person who is an individual;
 - (b) a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c.41));
 - (c) a person is entitled to pursue professional activities under a professional title to which the Directive applies in a state to which the Directive applies (other than the title of barrister or solicitor in England and Wales);

- (d) an authorised person which is a body in respect of which –
 - (i) the services condition is satisfied, and
 - (ii) the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of paragraphs (a) to (c).
 - (e) a body which provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions, and in respect of which the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of paragraphs (a) to (c).
- (7) For the purposes of this section, the services condition is satisfied in relation to a body if it provides only services which may be provided by a recognised body (having regard to rules under section 9(1A) and (1C)).
- (8) For the purposes of this section –
- “authorised person” has the same meaning as in section 9;
 - “the Directive” means Directive 98/5/EC of the European Parliament and the Council, to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;
 - “manager”, in relation to a body, has the meaning given by section 9;
 - “recognised body” has the same meaning as in section 9;
 - “registered European lawyer” has the same meaning as in section 9;
 - “shares” has the same meaning as for the purposes of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act);
 - “specified” means specified in rules made by the Society;
- and a person has an interest in a body if the person has an interest in the body for the purposes of section 9.